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Review of the efficiency of the administrative and financial functioning of the United Nations

Human resources management

Proposed Regulations governing the status, basic rights and duties of officials other than Secretariat officials and experts on mission and regulations governing the status, basic rights and duties of the Secretary-General

Report of the Secretary-General

1. In paragraph 1 of its resolution 55/221 of 23 December 2000, the General Assembly requested the Secretary-General:

“to undertake consultations on the proposed regulations with the officials referred to in paragraph 1 (a) of his report on proposed regulations governing the status, basic rights and duties of officials other than Secretariat officials and experts on mission,¹ in particular those who are elected by the General Assembly and its subsidiary organs, and to report thereon to the Assembly at its resumed fifty-fifth session, including on the following elements:

“(a) The compatibility of the proposed regulations with the statutes governing the officials referred to above;

“(b) The possible impact, if any, of the proposed regulations on the independence of those expert bodies;

“(c) The accountability mechanisms envisaged to enforce the proposed regulations”.

In paragraph 2 of the same resolution, the General Assembly also requested the Secretary-General, “in the context of the report mentioned in paragraph 1 above, to submit additional information on whether the proposed regulations ensure the impartiality, neutrality, objectivity and accountability of the personnel referred to in paragraph 1 (b) of the report.” The present report has been prepared by the Secretary-General in response to the above requests of the General Assembly.

2. As requested by the General Assembly in paragraph 1 of resolution 55/221, the Secretary-General consulted with the following five officials other than Secretariat officials: Chairman of the Advisory Committee on Administrative and Budgetary Questions (ACABQ); Chairman of the International Civil Service Commission (ICSC); Chairman of the International Law Commission (ILC); Chairman of the Joint Inspection Unit (JIU); Executive Chairman of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC). Those officials had already been consulted during the preparation of the Secretary-General's previous report (A/54/695).²



3. With respect to the request of the General Assembly in paragraph 2 of the resolution, the Secretary-General notes that the Assembly did not expressly request consultations with officials referred to in paragraph 1 (b) of the previous report. However, the Secretary-General has consulted with the chairperson of the group of special rapporteurs of the Commission on Human Rights since the group had provided comments during the course of preparation of the earlier report.

Consultations with officials other than Secretariat officials

4. The comments received from the five officials are quoted, in relevant part, below, followed by the Secretary-General's observations, if any, with respect to the comments.

5. **ACABQ.** The Chairman of the Advisory Committee indicated that he "will not make comments on these proposals".

6. **ICSC.** The Chairman of the International Civil Service Commission indicated that his comments on the proposed Regulations had already been submitted in his letter of 10 February 2000 to the Secretary-General, and the Chairman reaffirmed them. With respect to the three specific elements set out in subparagraphs (a) to (c) of paragraph 1 of resolution 55/221; the ICSC Chairman stated, in relevant part:

"... In the case of the International Civil Service Commission, its statute in paragraph 1 of article 1 affirms that the Commission is established by the General Assembly, ... 'for the regulation and coordination of the conditions of service of the United Nations common system'. Paragraph 2 of the same article reads: 'The Commission shall perform its functions in respect of the United Nations and of those specialized agencies and other international organizations which participate in the United Nations common system'; and according to paragraph 1 of article 6, 'the Commission shall be responsible as a body to the General Assembly. Its members shall perform their functions in full independence and with impartiality; they shall not seek or receive instructions from any Government, or from any secretariat or staff association of an organization in the United Nations common system.'

"As stated in the report of the Secretary-General, the proposed Regulations are modelled on article 1 of the Staff Regulations and chapter I of the 100 series of the Staff Rules. Thus they reflect provisions applicable to the United Nations staff and their relationship with the United Nations only. This is demonstrated by the wording of the draft Regulations relating to the officials in question, providing that they perform 'functions' or 'duties' for the United Nations or that they regulate their conduct 'with the interests of the United Nations only in view' ..., etc. Therefore, such provisions cannot summarily apply to ICSC officials, who, unlike other officials or experts mentioned in paragraph 4 of the report, do not perform their functions in respect of the United Nations only, but also of other agencies and organizations of the United Nations common system. That is why the Chairman and the Vice-Chairman of ICSC (who are proposed to be subject to the Regulations) are designated not by the Secretary-General, but by the General Assembly, which in this case acts as a trustee of the whole United Nations common system (in consultation with, inter alia, other organizations) and to which ICSC officials are accountable.

"It is evident from the examples cited earlier that a number of proposed Regulations which refer to the United Nations only are contrary to the letter and spirit of the statute insofar as their application to the Chairman and the Vice-Chairman of ICSC is concerned. Both of them in their capacities as members and officials of the Commission are obliged to perform their functions in an independent and impartial manner, since the appearance even of giving one organization of the common system preference would have far-reaching implications for the coherence of the system and the morale of the international civil service.

"Although the commentary to the individual provisions of the proposed Regulations is helpful in explaining those provisions (for instance, regulation 3), nevertheless it is not part of the Regulations to be adopted by the General Assembly, nor does it have the legal force of a rule (A/54/695, para. 9). It is clear, therefore, that

the text of the proposed Regulations themselves will be decisive and legally binding.

"In view of the above considerations, there seems to be a need for such changes in the proposed Regulations that would make them fully consonant with the statute of ICSC and its character as an independent and impartial body. The present wording is far from being satisfactory in this respect."

7. The Secretary-General notes that the above-quoted comments essentially raise the same issues as those set out in the Chairman's letter of 10 February 2000. The Secretary-General maintains the views as previously expressed in a letter of 10 March 2000,³ as follows:

"Having reviewed the matter, we do not believe that the language in the Secretary-General's report (A/54/695) and the draft regulations set out therein are incompatible with the special status of ICSC. Nonetheless, given the concerns that you have raised and in order to avoid any confusion on this matter, we believe it is desirable to clarify the matter to the Fifth Committee.

"Before responding to comments on specific aspects of the proposed Regulations, it is appropriate to address a general comment to the special status of ICSC. Under the statute of ICSC, the Commission is a body established by the General Assembly (see article 1.1 of the statute). Article 1.2 of the statute of ICSC provides that ICSC 'perform[s] its functions in respect of the United Nations and of those specialized agencies and other international organizations which participate in the United Nations common system'. The ICSC members, including the Chairman and the Vice-Chairman, are appointed and carry out functions entrusted to ICSC by the General Assembly (see article 2 of the statute). With respect to your specific comments, we have the following observations.

"(a) A/54/695, paragraphs 4 and 7; annex II, commentary 1 to regulation 1 (a), regulation 2 (d), 2 (g), etc.

"(b) Draft regulations 1 (b) and 2 (c)

"In paragraph 4 of the report, the 'Chairman and Deputy Chairman' of ICSC are listed as

examples of 'the presiding officers of United Nations organs performing functions for the Organization on a substantially full-time basis'. Paragraph 7 provides, inter alia, that officials other than Secretariat officials and experts on mission ('officials and experts') 'perform duties for the Organization'. Commentary 1 to regulation 1 (a) provides, inter alia, that '[t]he United Nations has persons who perform services for it on a substantially full-time basis but who are not staff members.' Draft regulation 2 (d) provides, inter alia, that officials and experts 'shall ensure that [their personal] views and convictions do not adversely affect their official duties or the interests of the United Nations.' Draft regulation 2 (g) provides that officials and experts 'may not accept any honour, decoration, favours, gift or remuneration from any Government or non-governmental source for activities carried out while in the service of the United Nations.' The declaration of office set out in draft regulation 1 (b), and draft regulation 2 (c) provides, inter alia, that officials and experts shall 'discharge their functions and regulate [their] conduct with the interests of the United Nations only in view'.

"As indicated above, ICSC is a subsidiary organ of the General Assembly and its members are appointed and carry out functions entrusted to ICSC by the Assembly. Therefore, while the functions that ICSC members carry out pursuant to the Commission's mandate under its statute concern both the United Nations and the specialized agencies, we do not believe that the language indicating that officials and experts perform 'functions', 'duties' or 'services' for the United Nations would be inconsistent with the ICSC statute, since the General Assembly adopted the statute and appointed the ICSC members, although in consultation with the other organizations in the common system (see article 4.1 of the statute). Moreover, we do not believe that the language indicating that officials and experts must regulate their conduct with 'the interests of the United Nations only in view' is inconsistent with the ICSC statute. The main thrust of the declaration set out in draft regulation 1 (b) is that officials and experts must not seek or accept instructions from external sources. The fact that only the United Nations, and not all the

specialized agencies that are members of the common system, is specifically mentioned in the declaration does not affect the purpose of the declaration. As far as draft regulation 2 (c) is concerned, its second sentence makes it clear that conduct 'with the interests of the Organization only in view' means '[l]oyalty to the aims, principles and purposes of the United Nations as set forth in the Charter'. This 'fundamental obligation', in our view, is applicable to members of ICSC, all of whom are appointed by the General Assembly.

"(c) *Draft regulation 1 (e)*

"Draft regulation 1 (e) provides, inter alia, that officials and experts shall immediately report the matter regarding the application of the privileges and immunities 'to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall be waived'.

"I note that under the General Convention [Convention on the Privileges and Immunities of the United Nations], it is the Secretary-General alone who has the right to make a decision concerning the waiver of the privileges and immunities accorded to officials and experts (see section 20 of the General Convention). Moreover, article 8.3 of the ICSC statute indicates that for the purposes of the General Convention, the Chairman and the Vice-Chairman of ICSC 'shall have the status of officials of the United Nations'. Therefore, the language in draft regulation 1 (e) is correct.

"(d) *Draft regulation 2 (d)*

"Draft regulation 2 (d) provides, inter alia, that officials and experts 'shall ensure that [their personal] views and convictions do not adversely affect their official duties or the interests of the United Nations.'

"Please see our observation to issues (a) and (b) above.

"(e) *Draft regulation 3*

"Draft regulation 3 provides that officials and experts 'are accountable to the United Nations for the proper discharge of their functions.'

"Since, under the ICSC statute, its members are accountable to the General Assembly and since it is the General Assembly that is promulgating these Regulations, we do not believe that the language in draft regulation 3 is inconsistent with the ICSC statute. In this respect, as noted by you, the commentary to draft regulation 3 makes it clear that the accountability of officials appointed by the General Assembly is a matter for the Assembly.

"In the light of the above, we do not believe that the draft Regulations set out in A/54/695 require revision. However, given the concerns that you have raised, we believe that it is desirable to clarify to the Fifth Committee that *the proposed Regulations, as applied to you and your colleagues in ICSC, and to other officials and experts who perform functions in respect of the common system in accordance with the statute of ICSC or other mandates approved by the General Assembly, should be construed in the light of those functions and mandates and that references in the Regulations and commentary to the United Nations or the United Nations Organization in the context of these Regulations and the commentary should be applied with that in mind.*" (Emphasis added.)

8. In this respect, the Secretary-General would be prepared to include the clarification, as underlined in the last paragraph of the above quotation, in the appropriate section of the Commentary.

9. ILC. The Chairman of the International Law Commission stated, in relevant part:

"I considered the draft Regulations from the viewpoint of their possible application to members of the International Law Commission. I did not see anything which would be contrary to the status and practice of the Commission members except perhaps paragraph 2 (g) of draft regulation 2. The paragraph is too broadly worded (in particular the use of the words 'while in the service of the United Nations') and might result in excessive stringency. If the language in the paragraph is taken in its plain meaning, Commission members may not accept any honour, decoration, favours, gift or remuneration from any Government or non-governmental sources for activities carried out during the entire

period of their appointment with the Commission. Commission members are not expected to perform services for the United Nations on a full-time basis The majority of them are employed by national Governments and educational institutions and they are paid for those services.

"Paragraph [2] (g), if strictly applied, not only is inconsistent with the practice of the Commission, but also is unreasonable as far as Commission members are concerned. Probably the intention of the provision in the paragraph is that officials in question cannot be paid by Governments or non-governmental sources for what they do in connection with their functions for the United Nations. Then the last line of subparagraph (g) should be modified so as to read '... for activities carried out in connection with the service of the United Nations'."

10. In reply to the above comment, the Secretary-General notes, as indicated in the commentary to proposed regulation 2 (g), that in order to ensure that officials and experts on mission are perceived as impartial, it was deemed appropriate to prohibit, without any exceptions, the acceptance of any honour, decoration, favour, gift or remuneration from any Government or non-governmental source for activities carried out by them while in the service of the United Nations. In this respect, the Secretary-General notes the comments of the Chairman of ILC and wishes to emphasize that the prohibition in the draft Regulation only relates to honour, decoration, favour, gift or remuneration received in connection with the work performed by officials and experts on mission while in the service of the United Nations. Accordingly, officials and experts on mission may accept any honour, decoration, favour, gift or remuneration from any Government or non-governmental source for activities carried out while not in the service of the United Nations. In order to reflect the above concern of the Chairman of ILC, the Secretary-General proposes to revise draft regulation 2 (g) as follows (revision is in bold): "... for activities carried out *during the course of the official functions* while in the service of the United Nations."

11. JIU. The Chairman of the Joint Inspection Unit provided comments similar to those provided by the Chairman of ICSC. The comments in relevant parts read as follows:

"In general terms, the Unit wishes to point out that the mandate and the functions of the Inspectors, as well as their rights and duties, are determined by General Assembly resolution 31/192 of 22 December 1976, by which the Assembly approved the statute of the Unit. The statute has been subsequently accepted (with or without reservations) by 11 specialized agencies and the International Atomic Energy Agency. Since the adoption of resolution 31/192, the statute has never been changed, nor has there been any proposal aiming at a revision. Thus, but indirectly also by referring to the statute in resolution 55/221, paragraph 1 (a), the General Assembly has expressed its ongoing support for the statute.

"The Unit holds the view that the proposed Regulations could only be of relevance if they were to address an issue which is not covered by the statute and where otherwise a legal lacuna would exist. In such a case, the proposed Regulations would only fulfil a complementary function. In any event, each article of the proposed Regulations would need to be interpreted and applied in such a manner that the letter and spirit of the JIU statute would not be altered or affected. It is essential that the independence of the Inspectors and their powers of investigation and all other elements constituting the purpose of the Unit be always safeguarded.

"With specific reference to **draft regulation 1 (b)**, it should be borne in mind that the Joint Inspection Unit performs its functions in respect of and is responsible not only to the General Assembly but similarly, as provided in article 1.2 of its statute, to the competent legislative organs of those specialized agencies and other international organizations within the United Nations system which accept its statute. Consequently, the written declaration to be subscribed by Inspectors should be amended to reflect the need for them to act with the interests of the pertinent organizations (plural) only in view, and the last phrase should be so worded as to recognize the possibility for any of the participating organizations to provide requests and/or suggestions to the Unit on matters

affecting the interest of those organizations based on article 9.1 of the JIU statute.

"With regard to **draft regulation 1 (e)**, it is understood that the role of the Secretary-General with regard to the possible waiver of privileges and immunities accorded to officials derives from the provisions of the Convention on the Privileges and Immunities of the United Nations. It is further noted from the commentary submitted regarding this draft regulation that, '[i]n deciding whether such privileges and immunities exist and whether they should be waived, the Secretary-General **may** (emphasis added) take into account the views of the legislative body that appointed the officials ...' In this context, considering the spirit of article 4.4 of the JIU statute and taking into account the difficulties that would be inherent in consulting the General Assembly should *such* a case of waiver of privileges and immunities ever arise, it is felt that the Secretary-General should undertake to consult the Unit in such eventualities.

"As regards **draft regulation 2** on the conduct of officials, the Unit naturally accepts the need for its members to uphold the high standards which the Charter, in Article 101, requires of Secretariat officials. It is at the same time conscious of its role as an external oversight body responsible only to the competent legislative bodies of the United Nations and the other participating organizations, requiring total independence from the secretariats of those organizations. The Unit consequently has reservations with regard to several of the provisions contained in draft regulation 2, which could entail that the Secretary-General exercise a certain 'oversight' function over the conduct of Inspectors.

In the view of the Unit, the following provisions of its statute deal adequately with the issues at hand:

(a) Article 4.4, on the termination of an Inspector's term of office;

(b) Article 6.3, on the need to be bound by professional secrecy as regards all confidential information they receive;

(c) Article 7, on the need to discharge their duties in full independence and in the sole interest of the participating organizations;

(d) Article 15, prohibiting acceptance of other employment during the term of office or appointment as an official or consultant of any participating organization while in office or within three years of ceasing to be a member of the Unit.

"With regard to the question of accountability, dealt with under **draft regulation 3**, it is evident that Inspectors, having been appointed by the General Assembly, are accountable to the Assembly for the proper discharge of their functions. Article 4.4 of the JIU statute provides the procedural prerequisites for a specific case of removal from office of an Inspector."

12. The Secretary-General has the following observations to the Chairman's comments.

13. With respect to the comment that the proposed Regulations could only be of relevance if they were to address an issue not covered by the JIU statute and that, in such a case, they would only fulfil a "complementary function", the Secretary-General agrees that the proposed Regulations would be complementary to the JIU statute. However, the Secretary-General believes that the proposed Regulations will provide a useful set of complementary provisions to the JIU statute since they address issues not expressly addressed by the JIU statute, e.g., provisions concerning acceptance of gifts and per diems (proposed regulations 2 (g) and (m)), conflict of interest and financial disclosure (proposed regulations 2 (h) and (i)) and obligation to comply with local laws and honour private legal obligations (proposed regulation 2 (j)). Therefore, the Secretary-General believes that the proposed Regulations are compatible with the JIU statute. However, the Secretary-General notes that the issue as to whether the proposed Regulations should apply to the JIU Inspectors and the ICSC Chairman, Vice-Chairman and members is a matter to be decided by the General Assembly.

14. With respect to the comment relating to draft regulation 1 (b) concerning the scope of functions of the JIU Inspectors under the JIU statute, the Secretary-General notes that the comment is essentially the same as that raised by the Chairman of ICSC concerning the

scope of functions of the ICSC Chairman, Vice-Chairman and members under the ICSC statute. Accordingly, the Secretary-General wishes to reiterate his position, quoted in paragraph 7 above, on this issue. Moreover, the Secretary-General believes that the concerns raised by JIU would be addressed by the proposal contained in paragraph 8 above, to include additional clarifying language in the appropriate section of the commentary. With respect to the specific proposed revisions to the language of draft regulation 1 (b), the Secretary-General considers that the same clarifying language to be added to the Commentary would address the concerns expressed by the Chairman of JIU without having to change the language of the draft regulation.

15. With respect to the comment concerning draft regulation 1 (e) on the waiver of the privileges and immunities accorded to the JIU Inspectors, the Secretary-General would be prepared to take into account the view of JIU, should there be an issue concerning the waiver of the privileges and immunities of the Inspectors, since JIU would be in a position to provide relevant information which would assist the Secretary-General in making a decision on such a matter.

16. With respect to the reservations that several provisions in proposed regulation 2 "could entail that the Secretary-General exercise a certain 'oversight' function over the conduct of Inspectors" and that the provisions in the JIU statute deal adequately with the issues at hand, the Secretary-General notes that provisions in the proposed regulation 2 do not provide for any oversight functions by the Secretary-General over officials and experts on mission. As indicated in paragraph 13 above, the Secretary-General believes that provisions in proposed regulation 2, and the proposed Regulations as a whole, would serve useful complementary functions to the JIU statute concerning the conduct expected of the JIU Inspectors.

17. With respect to the comment concerning proposed regulation 3 on accountability, the Secretary-General notes that the commentary to proposed regulation 3 makes it clear that "[f]or officials appointed by the General Assembly, that accountability would be a matter for the Assembly."

18. UNMOVIC. The Executive Chairman of UNMOVIC provided the following comment, which reads in relevant part:

"In the case of UNMOVIC, the Regulations would appear to apply (a) to the Executive Chairman and (b) to personnel who serve UNMOVIC as experts on mission. I believe that their enactment will bring the basic obligations of experts on mission into line with those of Secretariat officials and thus will provide us with a sound legal and administrative base for retaining personnel on special service agreements.

"On a point of detail, it is not clear whether the declaration referred to in draft regulation 1 (b) relates only to 'officials'. However, the commentary on that article indicates that it is also required of 'experts on mission'."

19. The Secretary-General will revise draft regulation 1 (b) to add the words "experts on mission" at the beginning thereof.

Comments from experts on mission

20. Some of the officials referred to above also addressed the issues concerning the application of the proposed Regulations to experts on mission serving in the respective five bodies. In addition to those comments, the Secretary-General is expecting to receive comments from the group of special rapporteurs of the Commission on Human Rights. The group had provided comments during the preparation of the earlier report of the Secretary-General (A/54/695) and the special rapporteurs are also referred to in paragraph 5 of that report. The current chairperson of the group has responded to the Secretary-General and indicated that the group will not meet before the next scheduled annual meeting, 18 to 22 June 2001, and therefore comments on the proposed Regulations could not be provided until after that time. In the meantime, the chairperson of the group has requested clarifications to facilitate the review of the draft Regulations during the annual meeting, including the issues concerning the unique status of "experts on mission" who are special rapporteurs in the field of human rights and their independence and a possible need to exempt them from the proposed Regulations so as not to jeopardize their independence. The Secretariat is providing the requested clarifications. In view of the above, the comments of the group of special rapporteurs could not be included in the present report,

and the Secretary-General will issue an addendum to the present report when the comments are provided.

Conclusions

21. Based on a review of the comments received from the officials and from experts on mission, the Secretary-General would recommend consideration by the General Assembly of the Regulations proposed in his previous report (A/54/695), with the following adjustments:

(a) To include the following clarification as new paragraph 3 of the commentary to proposed regulation 1 (a):

"The Regulations and the Commentary, as applied to the Chairman and the Vice-Chairman of the International Civil Service Commission, the Inspectors of the Joint Inspection Unit, and to other officials and experts who perform functions in respect of the common system, in accordance with the statute of the International Civil Service Commission or that of the Joint Inspection Unit, respectively, or other mandates approved by the General Assembly, should be construed in the light of those functions and mandates. References to the United Nations or the United Nations Organization in the context of these Regulations and the Commentary should be applied, bearing in mind that the functions of those officials and experts are related to the common system."

(b) To amend the first sentence of proposed regulation 1 (b) as follows (added text is in bold):

"Officials **and experts on mission** shall make the following written declaration witnessed by the Secretary-General or an authorized representative:"

(c) To amend proposed regulation 2 (g) as follows (added text is in bold):

"Officials and experts on mission may not accept any honour, decoration, favour, gift or remuneration from any Government or non-governmental source for activities carried out **during the course of their official functions** while in the service of the United Nations."

(d) To amend the commentary to proposed regulation 2 (g) as follows (added text is in bold):

"To ensure that officials and experts are perceived as impartial, draft regulation 2 (g) prohibits the acceptance of any honour, decoration, favour, gift or remuneration from any Government or non-governmental source for activities carried out **during the course of their official functions** while in the service of the United Nations."

22. The proposed Regulations and the Commentary as previously issued in document A/54/695 are set out in annexes I and II to the present report, with the proposed adjustments shown in bold.

Notes

¹ A/54/695 and Corr.1.

² In the preparation of the earlier report (A/54/695), the Executive Director of the United Nations Special Commission (UNSCOM), the predecessor of UNMOVIC, was consulted.

³ Letter dated 10 March 2000 from the Legal Counsel replying to a letter dated 10 February 2000 from the Chairman of ICSC.

Annex I

Draft Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission*

Draft regulation 1 **Status**

(a) The responsibilities of officials other than Secretariat officials (hereinafter referred to as "officials") and of experts on mission are not national but exclusively international.

(b) Officials *and experts on mission* shall make the following written declaration witnessed by the Secretary-General or an authorized representative:

"I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me by the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization."

(c) The Secretary-General shall seek to ensure that the rights and duties of officials and experts on mission, as set out in the Convention on the Privileges and Immunities of the United Nations,^a are respected. The Secretary-General shall also seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for officials and experts on mission carrying out the responsibilities entrusted to them.

(d) Experts on mission will receive a copy of the present Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission (hereinafter referred to as "Regulations") when they receive documentation from the United Nations relating to their mission and will be required to acknowledge receipt of the Regulations. Officials will receive a copy of the Regulations at an appropriate opportunity.

(e) The privileges and immunities enjoyed by the United Nations by virtue of Article 105 of its Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to those who are covered by them to fail to observe the laws and police regulations of the State in which they are located nor do they furnish an excuse for non-performance of their private obligations. In any case where an issue arises regarding the application of these privileges and immunities, an official or an expert on mission shall immediately report the matter to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall be waived, in accordance with the relevant instruments.

* Previously issued as A/54/695, annex I.

Draft regulation 2

Conduct

(a) Officials and experts on mission shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

(b) In the performance of their duties, officials and experts on mission shall neither seek nor accept instructions from any Government or from any other source external to the Organization.

(c) Officials and experts on mission shall discharge their functions and regulate their conduct with the interests of the Organization only in view. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all individuals covered by the present Regulations.

(d) While the personal views and convictions of officials and experts on mission, including their political and religious convictions, remain inviolable, they shall ensure that those views and convictions do not adversely affect their official duties or the interests of the United Nations. Officials and experts on mission shall conduct themselves at all times in a manner befitting their status. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status.

(e) Officials and experts on mission shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the gain of any third party, including family, friends and those they favour. Nor shall they use their office for personal reasons to prejudice the positions of those they do not favour.

(f) Officials and experts on mission shall exercise the utmost discretion in regard to all matters of official business. Officials and experts on mission shall not communicate to any Government, entity, person or any other source, any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General. If they are not appointed by the Secretary-General, such authorization shall be conferred by the body that appointed them. These obligations do not cease upon the cessation of their official functions.

(g) Officials and experts on mission may not accept any honour, decoration, favour, gift or remuneration from any Government or non-governmental source for activities carried out *during the course of their official functions* while in the service of the United Nations.

(h) Officials and experts on mission shall not be actively associated with the management of, or hold a financial interest in, any profit-making, business or other concern, if it were possible for them or the profit-making, business or other concern to benefit from such association or financial interest by reason of their position with the United Nations. Officials or experts on mission who are in such a situation shall either dispose of that financial interest or formally excuse themselves from

participating with regard to any involvement in that matter that has given rise to the conflict-of-interest situation.

(i) Officials and experts on mission shall file financial disclosure statements if requested to do so by the Secretary-General. The Secretary-General shall prescribe the format and information to be provided in such statements and shall establish procedures for filing them. The financial disclosure statements will remain confidential and will be used, as prescribed by the Secretary-General, only in making determinations pursuant to regulation 2 (h).

(j) Officials and experts on mission must comply with local laws and honour their private legal obligations, including, but not limited to, the obligation to honour orders of competent courts.

(k) Any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse, at the workplace or in connection with work, is prohibited.

(l) Officials and experts on mission shall not intentionally misrepresent their functions, official title or the nature of their duties to Member States or to any entities or persons external to the United Nations.

(m) Officials and experts on mission participating, as part of their official functions, in activities organized by a Government, intergovernmental organization, non-governmental organization or other private source, may receive from the Government, intergovernmental organization, non-governmental organization or private source, accommodation and travel and subsistence allowance generally in line with those payable by the United Nations. In such cases, the travel and subsistence allowance that may otherwise be payable by the United Nations shall be reduced in the same manner as in respect of staff members of the Organization.

Draft regulation 3

Accountability

Officials and experts on mission are accountable to the United Nations for the proper discharge of their functions.

Notes

^a United Nations, *Treaty Series*, vol. I, No. 4, p. 15.

Annex II

Draft Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission, together with explanatory Commentary*

Draft regulation 1 Status

Regulation 1 (a)

The responsibilities of officials other than Secretariat officials (hereinafter referred to as "officials") and of experts on mission are not national but exclusively international.

Commentary

1. The United Nations has persons who perform services for it on a substantially full-time basis but who are not staff members. These persons have consistently been referred to by the General Assembly as "officials other than Secretariat officials". In addition, pursuant to article V, section 17, of the Convention on the Privileges and Immunities of the United Nations^a of 13 February 1946 (hereinafter called the "General Convention"), the Secretary-General has specified and submitted to the Assembly proposals that a number of persons who occupy certain positions within the Organization be accorded the privileges and immunities under articles V and VII of the General Convention, even though they are not staff members. These persons have also been referred to as officials other than Secretariat officials.

2. The United Nations also has experts who perform assignments for the Organization. Article VI of the General Convention provides that experts (other than officials coming within the scope of article V) shall be accorded privileges and immunities necessary to enable them to carry out their missions for the United Nations and specifies a number of those privileges and immunities. These experts have been referred to as "experts on mission".

3. *The Regulations and the Commentary, as applied to the Chairman and the Vice-Chairman of the International Civil Service Commission, the Inspectors of the Joint Inspection Unit, and to other officials and experts who perform functions in respect of the common system, in accordance with the statute of the International Civil Service Commission or that of the Joint Inspection Unit, respectively, or other mandates approved by the General Assembly, should be construed in the light of those functions and mandates. References to the United Nations or the United Nations Organization in the context of these Regulations and the Commentary should be applied, bearing in mind that the functions of those officials and experts are related to the common system.*

* Previously issued as A/54/695, annex II.

4. Draft regulation 1 (a) is similar to the second sentence of staff regulation 1.1 (a).^b

* * *

Regulation 1 (b)

Officials *and experts on mission* shall make the following written declaration witnessed by the Secretary-General or an authorized representative:

"I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me by the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization."

Commentary

Draft regulation 1 (b), which is similar to staff regulation 1.1 (b), contains the declaration of office of officials and experts on mission.

* * *

Regulation 1 (c)

The Secretary-General shall seek to ensure that the rights and duties of officials and experts on mission, as set out in the Convention on the Privileges and Immunities of the United Nations, are respected. The Secretary-General shall also seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for officials and experts on mission carrying out the responsibilities entrusted to them.

Commentary

1. The first sentence of draft regulation 1 (c), which is similar to staff regulation 1.1 (c), codifies an implicit duty that falls upon the Secretary-General, namely, to seek to ensure that the rights and duties of officials and experts on mission as set out in the General Convention are respected (as such rights are granted by Governments, the Secretary-General can only "seek to ensure" that they are respected). The protection accorded to officials and experts on mission under this provision relates to their official acts and thus does not lapse upon cessation of their service for the Organization, or, if they are part-time, on days when they are not in service.
2. The second sentence of draft regulation 1 (c), which reproduces the essence of the second sentence of staff regulation 1.2 (c), sets forth the responsibility of the Secretary-General to seek to ensure the safety of officials and experts on mission.

* * *

Regulation 1 (d)

Experts on mission will receive a copy of the present Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission (hereinafter referred to as "Regulations") when they receive

documentation from the United Nations relating to their mission and will be required to acknowledge receipt of the Regulations. Officials will receive a copy of the Regulations at an appropriate opportunity.

Commentary

1. Experts on mission retained by the Secretariat sign a special services agreement or receive a letter or other documentation indicating the scope of their mission for the Organization. The special services agreement or other documentation will incorporate the Regulations by reference, and experts will be required to acknowledge that they will abide by the Regulations.
2. At times, legislative bodies entrust tasks to individuals to perform assignments for those bodies (for example, members and special rapporteurs of the International Law Commission and other bodies). Those individuals have the status of experts on mission. Although their appointments may have been concluded without the signature of any document of appointment, their attention will be drawn to the Regulations when they receive documentation from the Secretariat relating to their functions and/or their assignment. That documentation will include a copy of the Regulations explaining that they were adopted by the General Assembly and thus constitute part of the conditions of those individuals' assignment for the United Nations.
3. Officials will receive a copy of the Regulations at an appropriate time, for example, when they make the declaration of office (see draft regulation 1 (b)).

* * *

Regulation 1 (e)

The privileges and immunities enjoyed by the United Nations by virtue of Article 105 of its Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to those who are covered by them to fail to observe the laws and police regulations of the State in which they are located nor do they furnish an excuse for non-performance of their private obligations. In any case where an issue arises regarding the application of these privileges and immunities, an official or an expert on mission shall immediately report the matter to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall be waived, in accordance with the relevant instruments.

Commentary

1. Draft regulation 1 (e), which deals with privileges and immunities, is similar to staff regulation 1.1 (f) (see paras. 32, 49, 54 and 55 of the Report on Standards of Conduct in the International Civil Service 1954,^c which was prepared by the International Civil Service Advisory Board (hereinafter called the "ICSAB report")).
2. Draft regulation 2 (j) specifies the obligations on those who are covered by such privileges and immunities to honour their private legal obligations.
3. Pursuant to article V, section 20, and article VI, section 23, of the General Convention, it is only the Secretary-General who has the right to waive the privileges and immunities accorded to officials and experts on mission. In deciding

whether such privileges and immunities exist and whether they should be waived, the Secretary-General may take into account the views of the legislative body that appointed the officials or experts on mission.

* * *

Draft regulation 2 Conduct

Regulation 2 (a)

Officials and experts on mission shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

Commentary

1. Draft regulation 2 (a), which describes basic values expected of officials and experts on mission, is similar to staff regulation 1.2 (b).
2. The first sentence of draft regulation 2 (a) is derived from Article 101, paragraph 3, of the Charter of the United Nations by virtue of affirmatively placing upon officials and experts on mission the obligation to uphold the highest standards of efficiency, competence and integrity. As pointed out in paragraph 4 of the ICSAB report, the concept of integrity includes "honesty, truthfulness, fidelity, probity and freedom from corrupting influences".

* * *

Regulation 2 (b)

In the performance of their duties, officials and experts on mission shall neither seek nor accept instructions from any Government or from any other source external to the Organization.

Commentary

Draft regulation 2 (b), which is similar to staff regulation 1.2 (d), flows from the first sentence of Article 100, paragraph 1, of the Charter of the United Nations (see the ICSAB report, paras. 7, 18 and 31).

* * *

Regulation 2 (c)

Officials and experts on mission shall discharge their functions and regulate their conduct with the interests of the Organization only in view. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all individuals covered by the present Regulations.

Commentary

1. Draft regulation 2 (c) in substance contains the same obligations as are contained in staff regulation 1.2 (e) applicable to staff. The first sentence of

regulation 2 (c) sets forth an idea that is contained in staff regulation 1.1 (a) and in staff regulation 1.1 (b), which contains the written declaration of office, that is to say, the idea that staff must regulate their conduct with the interests of the Organization only in view (see the ICSAB report, para. 4).

2. The second sentence of draft regulation 2 (c) focuses on the concept of loyalty to the aims, principles and purposes of the Organization as set forth in the Charter of the United Nations (which is alluded to in the declaration contained in draft regulation 1 (b)) (ibid., paras. 5, 6 and 21).

* * *

Regulation 2 (d)

While the personal views and convictions of officials and experts on mission, including their political and religious convictions, remain inviolable, they shall ensure that those views and convictions do not adversely affect their official duties or the interests of the United Nations. Officials and experts on mission shall conduct themselves at all times in a manner befitting their status. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status.

Commentary

1. Draft regulation 2 (d) is similar to staff regulation 1.2 (f). The core idea of conduct befitting an international civil servant was considered by the International Civil Service Advisory Board in 1954. The Advisory Board remarked that "high standards of conduct are best attained by a universal understanding among staff members of the relation between their conduct and the success of the international organizations, and by the development of a strong tradition among men and women who are jealous of the reputation of the organizations that they serve and are anxious to safeguard it". (See the ICSAB report, para. 2; also para. 4 on the integrity expected of international civil servants; paras. 5, 6 and 21 on loyalty; paras. 7 and 18 on independence; and paras. 8 and 48 on impartiality.)

2. In respect of the last sentence of the draft regulation, it would be for the Organization to characterize an action or pronouncement as adversely reflecting on the status of an official or an expert on mission.

* * *

Regulation 2 (e)

Officials and experts on mission shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the gain of any third party, including family, friends and those they favour. Nor shall they use their office for personal reasons to prejudice the positions of those they do not favour.

Commentary

1. Draft regulation 2 (e), which is similar to staff regulation 1.2 (g), codifies principles set out in the ICSAB report (see paras. 17, 28 and 42). The use of one's office for personal gain is clearly unacceptable. This includes not only conducting a business from a United Nations office but also such activities as using United Nations facilities for a business, using the United Nations name, logo or address for a business and approving a contract for a family business without disclosure. Draft regulation 2 (e) also reflects the principle set out in staff regulation 1.2 (g) that a staff member shall not use information that has not been made public for the private advantage of the staff member or of any third party.

2. The draft regulation, for clarity, makes specific reference to prohibiting an official or expert on mission from so favouring a third party, including family or friends, as to enable that third party to profit from the position of the official or expert on mission or from the exercise of his or her functions. The term "friends" is broad and seeks to encompass not only friends as normally understood, but also relationships that are not recognized by the United Nations as creating a dependency.

3. The draft regulation also prohibits the use of office or knowledge gained from that office for personal reasons to prejudice or harm third parties.

* * *

Regulation 2 (f)

Officials and experts on mission shall exercise the utmost discretion in regard to all matters of official business. Officials and experts on mission shall not communicate to any Government, entity, person or any other source, any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General. If they are not appointed by the Secretary-General, such authorization shall be conferred by the body that appointed them. These obligations do not cease upon the cessation of their official functions.

Commentary

1. Draft regulation 2 (f), which is similar to staff regulation 1.2 (i), reflects the principle that official information may not be used for private purposes, except with authorization. This flows from the idea that officials and experts on mission are obligated to regulate their conduct with the interests of the Organization only in view (see the ICSAB report, para. 4) and also from the requirements of draft regulation 2 (e). It follows that permission must be obtained for disclosure to third parties of information that has not been made public, unless such disclosure is specifically authorized or is in the normal course of duties of the official or expert on mission. Authorization of the Secretary-General is not required for officials and experts on mission who have not been appointed by the Secretary-General. Those officials and experts on mission would require the authorization of the body that had appointed them if the communication of the information was not a normal part of their duties.

2. The last sentence of the draft regulation provides that the obligations contained in the provision do not cease upon cessation of official functions. It may be difficult to enforce such a provision, but, at the very least, if a former official or expert on mission ignored the obligations contained in this draft regulation, the official file of the former official or expert on mission could be noted so as to prevent his or her re-engagement.

* * *

Regulation 2 (g)

Officials and experts on mission may not accept any honour, decoration, favour, gift or remuneration from any Government or non-governmental source for activities carried out *during the course of their official functions* while in the service of the United Nations.

Commentary

To ensure that officials and experts are perceived as impartial, draft regulation 2 (g) prohibits the acceptance of any honour, decoration, favour, gift or remuneration from any Government or non-governmental source for activities carried out *during the course of their official functions* while in the service of the United Nations.

* * *

Regulation 2 (h)

Officials and experts on mission shall not be actively associated with the management of, or hold a financial interest in, any profit-making, business or other concern, if it were possible for them or the profit-making, business or other concern to benefit from such association or financial interest by reason of their position with the United Nations. Officials or experts on mission who are in such a situation shall either dispose of that financial interest or formally excuse themselves from participating with regard to any involvement in that matter that has given rise to the conflict-of-interest situation.

Commentary

1. The first sentence of draft regulation 2 (h) is similar to staff regulation 1.2 (m). The purpose of the provision is to put officials and experts on mission on notice that they cannot be actively associated with a profit-making, business or other concern, if either the concern or the official or expert on mission is to profit therefrom by reason of the association with the Organization. It will be for the Secretary-General or the appointing authority to judge whether a particular act has given rise to a conflict-of-interest situation.

2. The second sentence of draft regulation 2 (h) is similar to the second part of staff rule 101.2 (n) which deals with the consequences of a staff member's having a possible conflict-of-interest situation. In such cases, the official or expert on mission shall dispose of the interests or, if practicable, shall excuse himself or herself from dealing with the matter on behalf of the Organization.

3. Generally, experts on mission are appointed on a part-time basis, and it is therefore likely that they are engaged in other activities, including employment, when they are not performing services for the Organization. While there is no question that experts on mission may be so engaged, they must ensure that those activities are not incompatible with their status or functions as experts on mission.

* * *

Regulation 2 (i)

Officials and experts on mission shall file financial disclosure statements if requested to do so by the Secretary-General. The Secretary-General shall prescribe the format and information to be provided in such statements and shall establish procedures for filing them. The financial disclosure statements will remain confidential and will be used, as prescribed by the Secretary-General, only in making determinations pursuant to regulation 2 (h).

Commentary

Draft regulation 2 (i) is similar to, but more general than, staff regulation 1.2 (n), which requires all staff at the assistant secretary-general level and above to submit financial disclosure statements upon appointment and at intervals as prescribed by the Secretary-General, in respect of themselves and their dependent children, including any substantial transfers of assets and property to spouses and dependent children from the staff member or from any other source that might constitute a conflict of interest. This requirement is designed to minimize the risk of a perception of officials and experts on mission as using their position for personal gain. The draft regulation enables the Secretary-General to require officials and experts on mission to file financial disclosure statements, which will remain confidential and will be used only in dealing with conflict-of-interest situations, for example, in assessing whether an official was in such a situation.

* * *

Regulation 2 (j)

Officials and experts on mission must comply with local laws and honour their private legal obligations, including, but not limited to, the obligation to honour orders of competent courts.

Commentary

1. Draft regulation 2 (j), which is similar to staff rule 101.2 (c), is really an amplification of draft regulation 1 (e) which provides that the privileges and immunities of the Organization afford no excuse for non-performance of private obligations (see the ICSAB report, paras. 32, 54 and 55).

2. Draft regulation 2 (j) makes clear that private obligations must be honoured. It is the responsibility of those subject to the present Regulations, if they have a court order against them that they contest, to avail themselves of all means existing under the applicable national law to appeal the order and/or to secure relief from the obligation to comply with the order pending its appeal.

* * *

Regulation 2 (k)

Any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse, at the workplace or in connection with work, is prohibited.

Commentary

Draft regulation 2 (k), which is similar to staff rule 101.2 (d), reproduces the core of Secretary-General's bulletin ST/SGB/253 of 29 October 1992, which established United Nations policy on equal treatment of men and women in the Secretariat and also prohibited all forms of discrimination or harassment.

* * *

Regulation 2 (l)

Officials and experts on mission shall not intentionally misrepresent their functions, official title or the nature of their duties to Member States or to any entities or persons external to the United Nations.

Commentary

Draft regulation 2 (l) is similar to staff rule 101.2 (f) which prohibits the intentional misrepresentation of an official title or duties to outside parties, for example, by placing misleading titles on business cards. The use of the word "intentional" makes clear that this does not refer to careless or accidental acts.

* * *

Regulation 2 (m)

Officials and experts on mission participating, as part of their official functions, in activities organized by a Government, intergovernmental organization, non-governmental organization or other private source, may receive from the Government, intergovernmental organization, non-governmental organization or private source, accommodation and travel and subsistence allowance generally in line with those payable by the United Nations. In such cases, the travel and subsistence allowance that may otherwise be payable by the United Nations shall be reduced in the same manner as in respect of staff members of the Organization.

Commentary

1. Draft regulation 2 (m), which is similar to staff rule 101.2 (s), deals with the issue of participation at various official functions. Officials and experts on mission, who as part of their official functions participate in activities organized by a Government, intergovernmental organization, non-governmental organization or other private source, may receive from it accommodation and travel and subsistence allowance generally in line with those payable by the United Nations, and in such cases the allowances that may otherwise be payable by the United Nations shall be reduced in the same amount as in respect of staff members of the Organization. Such provisions are presently found in staff rule 107.15 (a).

2. It should be noted that accommodation and travel and subsistence allowance may be accepted only if doing so would be appropriate to the status of officials and

experts on mission and to the integrity, independence and impartiality that are required by that status. There may therefore be situations in which it would not be appropriate to accept those allowances from a Government, intergovernmental organization, non-governmental organization or other private source.

* * *

Draft regulation 3 **Accountability**

Officials and experts on mission are accountable to the United Nations for the proper discharge of their functions.

Commentary

Draft regulation 3, which is similar to staff regulation 1.3 (a), makes clear that officials and experts on mission are accountable for their actions. The method of accountability may vary. For officials appointed by the General Assembly, that accountability would be a matter for the Assembly. For experts on mission, it would be the Secretary-General or the appointing authority who could terminate an assignment or otherwise admonish the expert.

Notes

^a United Nations, Treaty Series, vol. I, No. 4, p. 15.

^b Hereinafter, staff regulations and rules refer to the provisions contained in article I of the Staff Regulations and chapter I of the 100 series of the Staff Rules which came into effect on 1 January 1999, pursuant to General Assembly resolution 52/252.

^c A/52/488 and Add.1, annex.